

By Senator Baxley

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1 A bill to be entitled
2 An act relating to drug-free workplaces; amending s.
3 440.102, F.S.; revising definitions; revising the
4 contents of an employer policy statement with respect
5 to employee drug use; revising the frequency of
6 followup testing; revising specimen collection,
7 verification, and documentation procedures; revising
8 requirements for confirmation testing; conforming
9 provisions to changes made by the act; revising
10 minimum requirements for laboratory reports of a drug
11 test result; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:
14

15 Section 1. Paragraphs (c), (e), and (q) of subsection (1),
16 paragraph (a) of subsection (3), paragraph (a) of subsection
17 (4), paragraphs (b), (c), (e), (f), (g), (h), (j), (k), and (l)
18 of subsection (5), subsection (6), paragraph (a) of subsection
19 (7), and paragraph (c) of subsection (9) of section 440.102,
20 Florida Statutes, are amended to read:

21 440.102 Drug-free workplace program requirements.—The
22 following provisions apply to a drug-free workplace program
23 implemented pursuant to law or to rules adopted by the Agency
24 for Health Care Administration:

25 (1) DEFINITIONS.—Except where the context otherwise
26 requires, as used in this act:

27 (c) "Drug" means any form of alcohol, as defined in s.
28 322.01(2), including a distilled spirit, wine, a malt beverage,
29 or an intoxicating preparation; any controlled substance

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30 identified under Schedule I, Schedule II, Schedule III, Schedule
31 IV, or Schedule V of s. 893.03; any controlled substance
32 identified under Schedule I, Schedule II, Schedule III, Schedule
33 IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s.
34 812(c); ~~liquor; an amphetamine; a cannabinoid; cocaine;~~
35 ~~phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a~~
36 ~~barbiturate; a benzodiazepine; a synthetic narcotic; a designer~~
37 ~~drug;~~ or a metabolite of any of the substances listed in this
38 paragraph. An employer may test an individual for any or all of
39 such drugs.

40 (e) "Drug test" or "test" means any chemical, biological,
41 or physical instrumental analysis administered, by a laboratory
42 certified by the United States Department of Health and Human
43 Services or licensed by the Agency for Health Care
44 Administration, for the purpose of determining the presence or
45 absence of a drug or its metabolites. In the case of testing for
46 the presence of alcohol, the test shall be conducted in
47 accordance with the United States Department of Transportation
48 alcohol testing procedures authorized under 49 C.F.R. part 40,
49 subparts J through M.

50 (q) "Specimen" means tissue, hair, or a product of the
51 human body capable of revealing the presence of drugs or their
52 metabolites, as approved by the United States Food and Drug
53 Administration, ~~or~~ the Agency for Health Care Administration,
54 the United States Department of Health and Human Services, or
55 the United States Department of Transportation.

56 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—

57 (a) One time only, before ~~prior to~~ testing, an employer
58 shall give all employees and job applicants for employment a

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59 written policy statement that ~~which~~ contains:

60 1. A general statement of the employer's policy on employee
61 drug use, which must identify:

62 a. The types of drug testing an employee or job applicant
63 may be required to submit to, including reasonable-suspicion
64 drug testing or drug testing conducted on any other basis.

65 b. The actions the employer may take against an employee or
66 job applicant on the basis of a positive confirmed drug test
67 result.

68 2. A statement advising the employee or job applicant of
69 the existence of this section.

70 3. A general statement concerning confidentiality.

71 4. Procedures for employees and job applicants to
72 confidentially report to a medical review officer the use of
73 prescription or nonprescription medications ~~to a medical review~~
74 ~~officer both before and after being tested.~~

75 5. A list of the most common medications, by brand name or
76 common name, as applicable, as well as by chemical name, which
77 may alter or affect a drug test. A list of such medications as
78 developed by the Agency for Health Care Administration shall be
79 available to employers through the department.

80 6. The consequences of refusing to submit to a drug test.

81 7. A representative sampling of names, addresses, and
82 telephone numbers of employee assistance programs and local drug
83 rehabilitation programs.

84 8. A statement that an employee or job applicant who
85 receives a positive confirmed test result may contest or explain
86 the result to the medical review officer within 5 working days
87 after receiving written notification of the test result; that if

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88 an employee's or job applicant's explanation or challenge is
89 unsatisfactory to the medical review officer, the medical review
90 officer shall report a positive test result back to the
91 employer; and that a person may contest the drug test result
92 pursuant to law or to rules adopted by the Agency for Health
93 Care Administration.

94 9. A statement informing the employee or job applicant of
95 his or her responsibility to notify the laboratory of any
96 administrative or civil action brought pursuant to this section.

97 10. A list of all drugs for which the employer will test,
98 described by ~~brand name or~~ common name, as applicable, as well
99 as by chemical name.

100 11. A statement regarding any applicable collective
101 bargaining agreement or contract and the right to appeal to the
102 Public Employees Relations Commission or applicable court.

103 12. A statement notifying employees and job applicants of
104 their right to consult with a medical review officer for
105 technical information regarding prescription or nonprescription
106 medication.

107 (4) TYPES OF TESTING.—

108 (a) An employer is required to conduct the following types
109 of drug tests:

110 1. Job applicant drug testing.—An employer must require job
111 applicants to submit to a drug test and may use a refusal to
112 submit to a drug test or a positive confirmed drug test as a
113 basis for refusing to hire a job applicant.

114 2. Reasonable-suspicion drug testing.—An employer must
115 require an employee to submit to reasonable-suspicion drug
116 testing.

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117 3. Routine fitness-for-duty drug testing.—An employer must
118 require an employee to submit to a drug test if the test is
119 conducted as part of a routinely scheduled employee fitness-for-
120 duty medical examination that is part of the employer's
121 established policy or that is scheduled routinely for all
122 members of an employment classification or group.

123 4. Followup drug testing.—If the employee in the course of
124 employment enters an employee assistance program for drug-
125 related problems, or a drug rehabilitation program, the employer
126 must require the employee to submit to a drug test as a followup
127 to such program, unless the employee voluntarily entered the
128 program. In those cases, the employer has the option to not
129 require followup testing. If followup testing is required, it
130 must be conducted at least six times in the first year, and may
131 be conducted twice for 1 additional year ~~once a year for a 2-~~
132 ~~year period~~ after completion of the program. Advance notice of a
133 followup testing date must not be given to the employee to be
134 tested.

135 (5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen
136 collection and testing for drugs under this section shall be
137 performed in accordance with the following procedures:

138 (b) Specimen collection must be documented, and the
139 documentation procedures shall include the+

140 ~~1.~~ labeling of specimen containers so as to reasonably
141 preclude the likelihood of erroneous identification of test
142 results. For saliva or breath alcohol testing, a specimen
143 container is not required if the specimen is not being
144 transported to a laboratory for analysis

145 ~~2. A form for the employee or job applicant to provide any~~

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146 ~~information he or she considers relevant to the test, including~~
147 ~~identification of currently or recently used prescription or~~
148 ~~nonprescription medication or other relevant medical~~
149 ~~information. The form must provide notice of the most common~~
150 ~~medications by brand name or common name, as applicable, as well~~
151 ~~as by chemical name, which may alter or affect a drug test. The~~
152 ~~providing of information shall not preclude the administration~~
153 ~~of the drug test, but shall be taken into account in~~
154 ~~interpreting any positive confirmed test result.~~

155 (c) Specimen collection, storage, and transportation to a
156 laboratory ~~the testing site~~ shall be performed in a manner that
157 reasonably precludes contamination or adulteration of specimens.

158 (e) A specimen for a drug test may be taken or collected by
159 any person who meets the qualification standards for urine or
160 oral fluid specimen collection as specified by the United States
161 Department of Health and Human Services or the United States
162 Department of Transportation. For alcohol testing, a person must
163 meet the United States Department of Transportation standards
164 for a screening test technician or a breath alcohol technician.
165 A hair specimen may be collected and packaged by a person who
166 has been trained and certified by a drug testing laboratory. A
167 person who directly supervises an employee subject to testing
168 may not serve as the specimen collector for that employee unless
169 there is no other qualified specimen collector available ~~of the~~
170 ~~following persons:~~

171 ~~1. A physician, a physician assistant, a registered~~
172 ~~professional nurse, a licensed practical nurse, or a nurse~~
173 ~~practitioner or a certified paramedic who is present at the~~
174 ~~scene of an accident for the purpose of rendering emergency~~

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175 ~~medical service or treatment.~~

176 ~~2. A qualified person employed by a licensed or certified~~
177 ~~laboratory as described in subsection (9).~~

178 (f) A person who collects or takes a specimen for a drug
179 test shall collect an amount sufficient for two independent drug
180 tests, one to screen the specimen and one for confirmation of
181 the screening results, at a laboratory as determined by the
182 Agency for Health Care Administration.

183 (g) Every specimen that produces a positive, confirmed test
184 result shall be preserved by the licensed or certified
185 laboratory that conducted the confirmation test for a period of
186 at least 1 year after the confirmation test was conducted ~~210~~
187 ~~days after the result of the test was mailed or otherwise~~
188 ~~delivered to the medical review officer.~~ However, if an employee
189 or job applicant undertakes an administrative or legal challenge
190 to the test result, the employee or job applicant shall notify
191 the laboratory and the sample shall be retained by the
192 laboratory until the case or administrative appeal is settled.
193 During the 60-day ~~180-day~~ period after written notification of a
194 positive test result, the employee or job applicant who has
195 provided the specimen shall be permitted by the employer to have
196 a portion of the specimen retested, at the employee's or job
197 applicant's expense, at another laboratory, licensed and
198 approved by the Agency for Health Care Administration, chosen by
199 the employee or job applicant. The second laboratory must test
200 the specimen at the limit of detection for the drug or analyte
201 confirmed by the original ~~at equal or greater sensitivity for~~
202 ~~the drug in question as the first~~ laboratory. If the drug or
203 analyte is detected by the second laboratory, the result shall

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204 be reported as reconfirmed positive. The first laboratory that
205 performed the test for the employer is responsible for the
206 transfer of the portion of the specimen to be retested, and for
207 the integrity of the chain of custody during such transfer.

208 (h) Within 5 working days after receipt of a positive
209 verified ~~confirmed~~ test result from the medical review officer,
210 an employer shall inform an employee or job applicant in writing
211 of such positive test result, the consequences of such results,
212 and the options available to the employee or job applicant. The
213 employer shall provide to the employee or job applicant, upon
214 request, a copy of the test results.

215 (j) ~~The employee's or job applicant's explanation or~~
216 ~~challenge of the positive test result is unsatisfactory to the~~
217 ~~employer, a written explanation as to why the employee's or job~~
218 ~~applicant's explanation is unsatisfactory, along with the report~~
219 ~~of positive result, shall be provided by the employer to the~~
220 ~~employee or job applicant; and All such documentation of a~~
221 positive test shall be kept confidential by the employer
222 pursuant to subsection (8) and shall be retained by the employer
223 for at least 1 year.

224 (k) An employer may not discharge, discipline, refuse to
225 hire, discriminate against, or request or require rehabilitation
226 of an employee or job applicant on the sole basis of a positive
227 test result that has not been reviewed and verified by a
228 ~~confirmation test and by a medical review officer, except when a~~
229 confirmed positive breath alcohol test was conducted in
230 accordance with United States Department of Transportation
231 alcohol testing procedures.

232 (l) An employer that performs drug testing or specimen

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233 collection shall use chain-of-custody procedures established by
234 the Agency for Health Care Administration, the United States
235 Department of Health and Human Services, or the United States
236 Department of Transportation to ensure proper recordkeeping,
237 handling, labeling, and identification of all specimens tested.

238 (6) CONFIRMATION TESTING.—

239 ~~(a) If an initial drug test is negative, the employer may~~
240 ~~in its sole discretion seek a confirmation test.~~

241 ~~(b) Only licensed or certified laboratories as described in~~
242 ~~subsection (9) may conduct confirmation drug tests.~~

243 ~~(c) All laboratory positive initial tests on a urine, oral~~
244 ~~fluid, blood, or hair specimen shall be confirmed using gas~~
245 ~~chromatography/mass spectrometry (GC/MS) or an equivalent or~~
246 ~~more accurate scientifically accepted method approved by the~~
247 ~~United States Department of Health and Human Services or the~~
248 ~~United States Department of Transportation Agency for Health~~
249 ~~Care Administration or the United States Food and Drug~~
250 ~~Administration as such technology becomes available in a cost-~~
251 ~~effective form.~~

252 ~~(b)(d)~~ If a ~~an~~ initial drug test of an employee or job
253 applicant is confirmed by the laboratory as positive, the
254 employer's medical review officer shall provide technical
255 assistance to the employer and to the employee or job applicant
256 for the purpose of interpreting the test result to determine
257 whether the result could have been caused by prescription or
258 nonprescription medication taken by the employee or job
259 applicant.

260 (c) For a breath alcohol test, an initial positive result
261 shall be confirmed by a second breath specimen taken and tested

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262 using an evidential breath testing device listed on the
263 conforming products list issued by the National Highway Traffic
264 Safety Administration and conducted in accordance with United
265 States Department of Transportation alcohol testing procedures
266 authorized under 49 C.F.R. part 40, subparts J through M.

267 (7) EMPLOYER PROTECTION.—

268 (a) An employee or job applicant whose drug test result is
269 confirmed or verified as positive in accordance with this
270 section shall not, by virtue of the result alone, be deemed to
271 have a “handicap” or “disability” as defined under federal,
272 state, or local handicap and disability discrimination laws.

273 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.—

274 (c) A laboratory shall disclose to the medical review
275 officer a written positive confirmed test result report within 7
276 working days after receipt of the sample. All laboratory reports
277 of a drug test result must, at a minimum, state:

278 1. The name and address of the laboratory that performed
279 the test and the positive identification of the person tested.

280 2. Positive results on confirmation tests only, or negative
281 results, as applicable.

282 3. A list of the drugs for which the drug analyses were
283 conducted.

284 4. The type of tests conducted for both initial tests and
285 confirmation tests and the minimum cutoff levels of the tests.

286 ~~5. Any correlation between medication reported by the~~
287 ~~employee or job applicant pursuant to subparagraph (5)(b)2. and~~
288 ~~a positive confirmed drug test result.~~

289
290 A report must not disclose the presence or absence of any drug

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291 other than a specific drug and its metabolites listed pursuant
292 to this section.

293 Section 2. This act shall take effect July 1, 2019.